

RECEIVED
CENTRAL FAX CENTER

JUL 24 2006

REMARKS

Applicant has carefully reviewed the Office Action mailed May 1, 2006 and offers the following remarks.

Claims 1, 6, 7-11, 12-15, 17-20, and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,205,557 to Chong et al. (hereinafter "Chong") in view of U.S. Patent No. 5,430,709 to Galloway (hereinafter "Galloway") and further in view of U.S. Patent No. 5,812,748 to Ohran et al. (hereinafter "Ohran"). Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. MPEP § 2143.03. For the Patent Office to combine references in an obviousness rejection, the Patent Office must prove there is a suggestion to combine the references. For the Patent Office to prove that there is a suggestion to combine the references, the Patent Office must do two things. First, the Patent Office must state a motivation to combine the references, and second, the Patent Office must support the stated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). To rely on a reference under 35 U.S.C. § 103, the reference must be analogous prior art. MPEP § 2141.01(a). If a combination changes the principle of operation of one of the references, then the combination is non-obvious. MPEP § 2143.01. If the Patent Office cannot establish obviousness, the claims are allowable.

Before addressing the rejections, Applicant provides a brief summary of the present invention so that the remarks relating to the references are considered in the proper context. The present invention is designed to facilitate operation of a backup call server. In particular, a packet-based network has two call servers. The primary call server handles the bulk of the call processing, but may be subject to the occasional failure. When a failure occurs, call processing shifts to the backup call server. For the backup call server to be aware of currently existing call flows, the backup call server sends requests to media gateways about active connections. The media gateways respond to these requests with information about the active connections. In short, the backup call server proactively secures information about the active connections rather than rely on the active call server sending the information to the backup call server.

Claim 1 recites "sending a request, from the backup call server, to a media gateway. . . and receiving said information at the backup call server." These actions by the backup call server are not taught or suggested by the combination of references. Specifically, Chong clearly

indicates that Chong's active server sends information about active calls to the backup call server (see *inter alia* Chong's Abstract and col. 4, lines 28-36). Chong never teaches the backup call server sending a request for information or receiving the requested information. Likewise, Galloway teaches a method of monitoring communication connections temporarily established between respective pairs of entities (see Galloway, col. 1, lines 58-60), but makes no reference to a backup or standby call server. Thus, Galloway does not teach the backup call server sending a request for information about an active connection and receiving the requested information.

In the current Office Action, the Patent Office admits that the combination of Chong and Galloway fails to teach the request originating from a backup call server for information about the active media connection and receiving the information at the backup call server, but now cites to Ohran as teaching what Chong and Galloway fail to teach (Office Action mailed May 1, 2006, p. 4). In particular, the Patent Office cites to the title, col. 4, lines 29-46, col. 15, lines 19-24, and col. 24, lines 37-43 of Ohran. Applicant respectfully traverses. Ohran is not properly combinable with Chong and Galloway, and even if properly combined, fails to cure the deficiencies of Chong and Galloway.

First, Applicant respectfully submits that Ohran cannot be properly combined with Chong and Galloway because it is non-analogous art. See MPEP § 2141.01(a). "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). Ohran is directed to a backup computer system that runs a mass storage access program that mirrors disks or storage devices on the backup computer system to make them appear as if they were disks or mass storage devices on a file server computer (Ohran, Abstract). Chong is directed to a telecommunication network that has an active call server and a backup call server for redundant call processing. Galloway relates to a method of monitoring communication connections established over a telecommunication network, particularly to the generation of call records for connections conducted in accordance with the

TCP/IP protocols. It is clear that Ohran is not in the same field of endeavor as Chong and Galloway.

Neither does Ohran logically commend itself to the attention of the inventor of the present invention in considering the problem to be solved by the present invention. The present invention is directed to a backup call server in a packet-based telecommunication network that needs to secure information about the active connections rather than rely on the active call server sending the information to the backup call server, such that the backup call server is aware of currently existing call flows. Someone trying to solve that problem certainly would not look to a computer system like Ohran that is directed to recover from computer failure in a system with redundant computers having mass storage devices. Ohran is not even in the telecommunication field and would not commend itself to a person of ordinary skill in the art trying to address control of media gateways in a packet-based telecommunication system. Thus, Ohran is non-analogous art and is not properly combined with Chong and Galloway.

Moreover, if Ohran was combined with Chong and Galloway, one or more of the references would have their principle of operation changed by the combination. Just the combination of Chong and Galloway changes the principle of operation of Chong. Specifically, Chong explicitly indicates that the active call server sends call information to the standby call server. Since Chong already has a mechanism to deliver information to the backup call server, this combination changes Chong's principle of operation, and thus, the combination is non-obvious. Adding the backup computer system of Ohran that runs a mass storage access program that mirrors disks or storage devices on the backup computer system would further change the principle of operation of Chong (and Galloway and Ohran as well). Since the addition of Ohran would change the principle of operation of the references, the addition of Ohran to the combination is not proper for an additional reason.

Moreover, the Patent Office's stated motivation does not compel the combination of Ohran with Chong and Galloway. The Patent Office's stated motivation is "to eliminate the need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the record synchronized (Ohran, Column 3, line 43-48)" (Office Action mailed May 1, 2006, pp. 4-5). However, this asserted motivation does not compel the combination. Chong (or the combination of Chong and Galloway) does not have a need for time consuming copying of information from primary to secondary/backup server and vice versa in keeping the

record synchronized. Therefore, a person of ordinary skill in the art having the systems of Chong and Galloway would not need to look to Ohran. For this additional reason, the addition of Ohran to the combination is not proper.

Even if properly combined, a point Applicant does not concede, the combination does not teach or suggest each and every claim element. If Chong and Galloway are combined, the combination results in an active call server monitoring active connections. Further, the combination, because of the teachings of Chong, requires that the active server sends the call information to the backup call server. The Patent Office is not free to ignore this portion of Chong. MPEP § 2143.01. However, having the active server send the information to the backup server is not what is claimed. Adding Ohran to the combination does not cure the deficiencies of Chong and Galloway. Ohran does not teach or suggest a backup call server. Even if the backup computer system of Ohran is equated to the backup call server, Ohran fails to teach or suggest that a request being sent from the backup call server. Likewise, Ohran fails to teach or suggest the request is for information regarding active media connections. Ohran also fails to teach or suggest receiving information regarding active media connections at the backup call server. Since Ohran does not teach the claim element of the backup call server sending the request and receiving information regarding active media connections at the backup call server, the combination does not teach or suggest each element, and the combination fails to establish obviousness.

Claims 6-11 depend from claim 1 and are non-obvious at least for the same reasons.

Claim 12 recites a backup call server sending a request and receiving requested information at the backup call server. As explained above, the combination of Chong, Galloway, and Ohran does not teach the backup call server sending the request and receiving the information. Thus, claim 12 is non-obvious at least for the same reasons.

Claim 13 likewise recites sending a request from the backup call server and receiving said information at the backup call server. As explained above, the combination of Chong, Galloway, and Ohran does not teach the backup call server sending the request and receiving the information. Thus, claim 13 is non-obvious at least for the same reasons.

Claim 14 likewise recites sending a request from the backup call server and receiving said information at the backup call server. As explained above, the combination of Chong,

Galloway, and Ohran does not teach the backup call server sending the request and receiving the information. Thus, claim 14 is non-obvious at least for the same reasons.

Claim 15 likewise recites receiving a request from the backup call server and sending said information to the backup call server. As explained above, the combination of Chong, Galloway, and Ohran does not teach the backup call server making the request or sending the information to the backup call server in this manner. Thus, claim 15 is non-obvious at least for the same reasons.

Claims 17-20 depend from claim 15 and are non-obvious at least for the same reasons.

Claim 22 likewise recites receiving a request from the backup call server and sending said information to the backup call server. As explained above, the combination of Chong, Galloway and Ohran does not teach the backup call server making the request or sending the information to the backup call server in this manner. Thus, claim 22 is non-obvious at least for the same reasons.

Claims 2-5 and 16 were rejected under 35 U.S.C. § 103 as being unpatentable over Chong in view of Galloway and Ohran and further in view of what would have been obvious to one of ordinary skill in the art at the time the invention was made. Applicant respectfully traverses. The standards for establishing obviousness are set forth above.

Claims 2-5 and 16 depend from claims 1 and 15, respectively, and contain all of the limitations of their respective independent claims. As explained above, the combination of Chong, Galloway, and Ohran does not teach limitations of claims 1 and 15. Thus, the combination of Chong, Galloway, and Ohran does not teach or suggest all of the claim elements of claims 2-5 and 16. Since the combination does not teach or suggest the claim elements, the combination does not establish obviousness, and claims 2-5 and 16 are allowable.

Claims 21 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,724,747 to Arango et al. (hereinafter "Arango") in view of Ohran. Applicant respectfully traverses. The standards for obviousness are set forth above.

Claim 21 recites receiving from a backup call server a request for information and transmitting information to the backup call server. Claim 23 recites that the backup call server sends a request to the media gateway and receives the information. The Patent Office admits that Arango does not teach the request originating from a backup call server to receive the information about the active media connection and receiving the information at the backup call

server (Office Action mailed May 1, 2006, pp. 9-10). The Patent Office cites to Ohran as teaching the limitation. This is the same limitation that the Patent Office asserts is taught by Ohran with respect to claims 1, 12, 13, 15, and 22. For the same reasons as set forth above with respect to claims 1, 12, 13, 15, and 22, Ohran is not properly combinable with Arango, which is directed to media connections in a packet-based telecommunication network, because it is non-analogous art and would change the principle of operation of Arango. Moreover, the Patent Office's stated motivation to combine Ohran with Arango is the same as the stated motivation to combine Ohran with Chong and Galloway, and fails to compel the combination for the same reasons set forth above. Finally, as set forth above, Ohran does not teach the limitations for which it is cited. Thus, the combination of Arango and Ohran cannot teach or suggest each and every claim element of claims 21 and 23. Since the combination does not teach or suggest the claim element, the combination does not establish obviousness, and claims 21 and 23 are allowable.

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

CERTIFICATE OF TRANSMISSION	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Gereziher, Yemane M.</u> Art Unit: <u>2144</u> Fax: <u>571-273-8300</u>	
<u>Kelly Farrow</u> Name of Sender	
<u>[Signature]</u> Signature	
<u>7/24/06</u> Date of Transmission	

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: July 24, 2006

Attorney Docket: 7000-500